

as here the Viscount was fully satisfied by the sale of lands, the price whereof did exceed all the money paid to Gregorie.—It was *duplied*, That the Viscount did never sell any lands as heir to his father, but as a singular successor, by acquiring Gregorie's comprising, who had only ratified for himself, but never had obliged his heirs; so that he dying, his brother David had a full right to the comprising as being served heir; and the conditions of the ratification never being fulfilled in his brother's time, could not oblige him; and as to the Viscount, he could never be overtaken upon the act of Parliament; seeing it did only give a power to redeem from apparent heirs, buying in the first comprising, to posterior creditors who should comprise their reversions; whereas Muldavit was not at all a compriser, but had only a base infestment, and so could not crave the benefit of the act of Parliament; and whensoever he shall obtain a decret, and thereupon comprise, he shall have an answer; and albeit he had comprised, yet he could never crave the redemption of these bonds, because Frendraught had comprised this right of Gregorie's, not only by the sale of some lands, but by payment of L. 20,000 out of his own means and estate, which he never had from his father.—THE LORDS having considered the postscript and ratification of the contract of marriage, found, That it bearing no special time, and Gregorie being fully satisfied, and the condition specified fulfilled by rights made to him of as many lands as satisfied his interest, he could never quarrel the ratification made by Mr George Gregorie, to whom he was heir by progress; and as to the act of Parliament whereupon this Viscount alleged, they found, That albeit it did only bear a reversion in favour of true creditors, yet by several practiques the Lords had found, that they having a real infestment in the estate, they need not apprise from apparent heirs the reversions of prior comprisings, which were only to multiply charges and expenses; but had a good title to pursue the apparent heirs who bought in comprisings, to dispoise as much of the estate as would effer to their sums, he being fully satisfied of the true sums given out by him for acquiring these comprisings. But as to this case, they found that point not necessary to be decided; it being alleged and found relevant, that the agreement with Mr John Gregorie was specific, fulfilled by this Viscount of Frendraught, who was apparent heir, not by his own means, but by the lands and true estate of the last Viscount, which they only found obligatory by Gregorie's heirs.

Gosford, MS. No 933. p. 611.

1678. *January 15.* M'DOUGAL *against* GUTHRIE and his SPOUSE.

ANDREW M'DOUGAL pursues ——— Urquhart as heir to ——— Urquhart of Dunleughs his debtor, and Sir Henry Guthrie for his interest; and insists against her as intromitter by herself and her husband with the rents of the lands wherein her father died infest.—The defender *alleged* absolvitor, because any intro-

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that the husband of an heir apparent may acquire apprisings without being liable to redemption on the terms of an heir apparent.

mission had by her husband, was *singulari titulo*, viz. an apprising against her father, whereunto her husband had right.—The pursuer *replied*, That by the act of Parliament 1661, apprisings coming in the person of the apparent heir, or any other to their behoof, are redeemable by payment of the sum they truly gave out, and this apprising being acquired by the husband of the apparent heir, it was alike as if it were acquired by herself, or must be presumed to her behoof, otherwise the act of Parliament would have been ineffectual as to all heirs-female.—It was *duplied*, That statutes being *stricti juris*, cannot be extended by the Lords; and this point was already determined betwixt Lamont and the Laird of Hall-yards, No 52. p. 5310; and that unless the apprising was acquired by the means of the heir-female, or to her behoof, or that she were to be fiar therein, the acquisition by the husband was not redeemable upon the sums he paid, though he might have gotten ease upon the account of his wife.

Which the LORDS did also sustain in this case.

Fol. Dic. v. 1. p. 360. Stair, v. 2. p. 672.

* * Fountainhall reports the same case:

AN action was brought by Andrew M'Dougal against Sir Henry Guthrie's son for payment of a debt owing by his wife's father, and convenes him as intromitter.—*Alleged* he did it by comprisings he had acquired.—*Answered*, The apparent heir, by the 62d act in 1661, acquiring rights, they are redeemable from him.—*Replied*, It is not here the apparent heir that purchases, but her husband.—*Duplied*, In 1674, Richardson *contra* Palmer and Halyards, No 54. p. 5312. the Lords found the husband in the same case.—*Triplied*, That practise was just contrary; for it is a correctory law, and so to be strictly taken.—THE LORDS found the husband not liable, unless it were proven he acquired the apprisings with the wife the apparent heir's means, or that the fee of the right taken to the apprising terminates on her and her heirs; but that an ease and compensation was got on the wife's account, seems not fully relevant.

Fountainhall, MS.

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The power of redeeming apprisings bought in by apparent heirs, is competent only to creditors, not to the debtor himself.

1680. December 3. NASMITH against NASMITH.

SIR MICHAEL NASMITH pursues declarator against James Nasmith his son for redemption of his lands of Posso, apprised by Dr Burnet, on this ground, that the right of the apprising coming in the person of James his apparent heir, it is redeemable by the space of 10 years after the apparent heir's right thereto, for the sums he truly paid out, which his father is willing to pay him.—It was *answered*, That this power of redemption being introduced by the act of Parliament 1661, betwixt debtor and creditor, it is only in favour of creditors, that